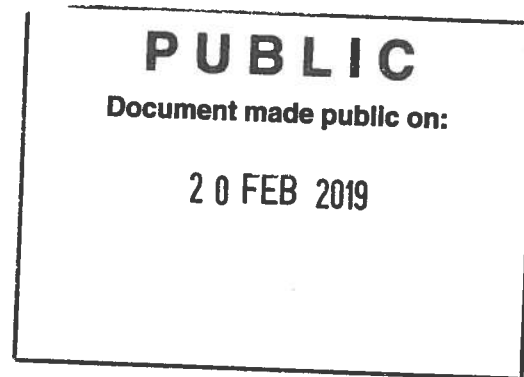


Ensuring quality data for law enforcement:
**FRA Report on Surveillance by Intelligence
Services**

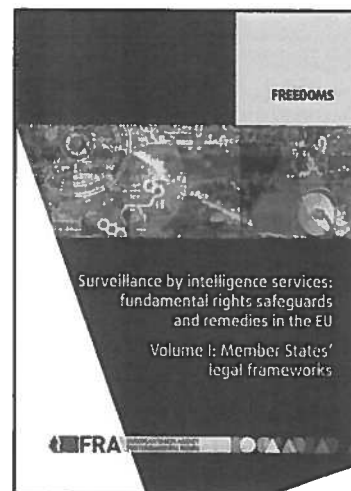


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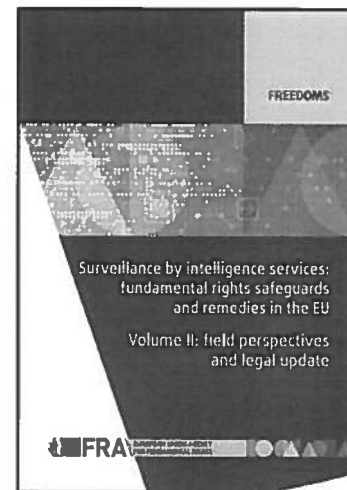
***EDEN ERA Conference
The Hague, 22-23 November 2018***

Panel 6: If you can make it there, you can make it
anywhere – data protection by design for cooperation
between law enforcement and intelligence services?

Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU



*Volume I:
Member States' legal
frameworks*



*Volume II:
Field perspectives and
legal update*

Need for Proper Safeguards

“There is an accountability gap. You know that all oversight bodies are looking at their national services, no one is looking at how the cooperation of secret services as a whole works out. When our services send the information we look at the ways they apply the rules, we do not know what the other intelligence service will do with it, we always follow one end of the string and the other end is not known.”

(Expert Body)

- To guarantee **the reliability** of the shared information
- To secure **compliance with the rule of law**

ECtHR, Big Brother Watch and Others. v. United Kingdom (13 September 2018)

- First landmark judgement assessing **the compliance** of an intelligence sharing regime **with human rights standards**
- For **sufficient foreseeability** and to minimise any **abuse of power**, interception programmes must comply with **already established standards in the area of surveillance.**

Member States' Legal Frameworks

- Almost all Member States authorise international intelligence cooperation by law
- Only few regulate its modalities and scope by law

Intelligence Sharing Safeguards

1. **Prior approval** of agreement by the executive
2. Implementation of **fundamental rights risk assessments**
3. Strong guarantees for **protection of sources and personal information**
4. **Data reliability** assessments
5. Obligation to **keep records**

Oversight of International Intelligence Cooperation

Oversight Prescribed by Law:
11 Member States

3 Member States **legally exclude** international cooperation

4 Member States **limit the scope** of control

4 Member States have **the same oversight regime** as for domestic intelligence

No Legal Basis for Oversight:
17 Member States

Determination of oversight bodies' competences is **subject to Interpretation.**

FRA Opinions

- **FRA Opinion 9:** The need for **clearly defined rules** on international intelligence sharing that are subjected to **review by oversight bodies**.
- **FRA Opinion 10:** The extent of **oversight bodies' competences** has to be clearly defined by **legal frameworks** regulating intelligence cooperation.
- **FRA Opinion 11:** Member States should grant to oversight bodies **full access to data** transferred through international cooperation.

Thank you for your
attention!

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